APPLICATION OF

MIRANT DANVILLE, LLC **CASE NO. PUE010430**

For approval of a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2, an exemption from Chapter 10 of Title 56 and interim approval to make financial commitments and undertake preliminary construction work

REPORT OF DEBORAH V. ELLENBERG, CHIEF HEARING EXAMINER

February 4, 2002

On August 16, 2001, Mirant Danville, LLC ("Mirant Danville" or "the Company") filed an Application requesting that the Commission grant Mirant Danville a certificate of public convenience and necessity ("CPCN") pursuant to Va. Code § 56-265.2 to construct an 870 MW natural gas-fired electric generating facility (the "Facility") at the AirSide Industrial Park in Danville, Virginia. In addition, Mirant Danville sought an exemption from the provisions of Chapter 10 of Title 56, pursuant to Va. Code § 56-265.2 B, and interim approval to make financial expenditures and undertake preliminary construction work, pursuant to Va. Code § 56-234.3. The Application included the supporting testimony and exhibits of Gil Waldman, project director for Mirant Americas Development, Inc. and Don Hooks, environmental project manager for Mirant Americas Development, Inc.

On September 10, 2001, the Commission entered an order requiring Mirant Danville to provide public notice of its Application, establishing a procedural schedule for the filing of testimony and exhibits, and scheduling an evidentiary hearing for December 5, 2001. Columbia Gas of Virginia, Inc. ("Columbia Gas"), filed its Notice of Participation on October 3, 2001. On October 26, 2001, the City of Danville ("Danville") filed its Notice of Participation in this proceeding. Danville filed the prefiled testimony of James S. Harr, deputy general manager of the Danville Utility Department on November 2, 2001.

On November 19, 2001, the Staff filed the prefiled testimony of Staff witnesses: John R. Ballsrud, principal financial analyst in the Commission's Division of Economics and Finance; Marc A. Tufaro, assistant utilities analyst with the Commission's Division of Energy Regulation; and Mark K. Carsley, principal research analyst in the Commission's Division of Economics and Finance. Appendix A of Mr. Tufaro's prefiled testimony includes the Department of Environmental Quality's ("DEQ's") Comments and Recommendations from its coordinated review with other interested agencies regarding the environmental impacts of the Facility ("DEQ Comments").

On November 28, 2001, Mirant Danville filed the rebuttal testimony of Gil Waldman and Don Hooks.

On December 5, 2001, the evidentiary hearing was convened as scheduled. Richard D. Gary, Esquire, John M. Holloway III, Esquire, and Angela Jenkins, Esquire, appeared on behalf of Mirant Danville. Katharine A. Hart, Esquire, and Allison L. Held, Esquire, appeared on behalf of the Commission's Staff (the "Staff"). M. Renae Carter, Esquire, appeared on behalf of Columbia Gas. Carter Glass, IV, Esquire, and Timothy Spencer, Esquire, appeared on behalf of Danville. By agreement of counsel the prefiled testimony and exhibits were admitted into the record without causing the witnesses to be subject to cross-examination. Columbia Gas also offered a Stipulation agreed to by the parties, that addressed its concerns. Proof of notice was marked and received into the record. A transcript of the hearing is being filed with this Report.

Although no public witnesses appeared at the hearing, Delegate Whittington Clement and the Danville Utility Commission filed letters supporting the construction and operation of the Facility.

SUMMARY OF THE RECORD

Mirant Danville is a limited liability company organized under the laws of the State of Delaware and is wholly owned by Mirant Virginia Investments, Inc., which is wholly owned by Mirant Americas, Inc.[1] Mirant Danville plans to build what will begin as a 320 MW natural gas-fired, simple-cycle power plant.[2] It was expected that Mirant Danville will break ground in the spring of 2002 and will proceed to lay the first foundation by the summer of 2002. The Company proposed to install four 80 MW combustion turbines ("CTs"), and it expects to commence commercial operation around the spring of 2003.[3] Mirant Danville anticipates that it will install two additional 170 MW CTs, which will commence commercial operation in the spring of 2004. The 170 MW CTs will eventually be operated in a combined-cycle configuration with two heat recovery steam generators ("HRSGs") and a steam turbine. The installation of the two HRSGs and the steam turbine is planned for the spring of 2007.[4] The cost of the Facility is estimated to exceed $500 million. The project will be located on a 66.7-acre site adjacent to the Nestle and Diebold plants in the AirSide Industrial Park.[5] It is anticipated that all of the electricity produced by the Facility will be sold on a wholesale basis.[6] The Facility is proposed as a merchant plant to be built without power purchase commitments.[7] Mirant Danville's wholesale sales of power will be subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC") pursuant to 16 U.S.C. § 824.

The Facility will utilize natural gas as its only fuel. A Transcontinental Gas Pipe Line Company ("Transco") interstate natural gas pipeline is in place approximately 14 miles northwest of the Facility site, and Danville will own and operate a new lateral pipeline to supply gas from the

[1]Exhibit JRB-5, at 2.
[2]An article in the February 1, 2002, Danville Register & Bee reported that the plans to construct the Facility have been cancelled, but no motion to withdraw this application has yet been filed.
[3]Exhibits GW-1, at 1-2 and MAT-6, at 3.
[4]Exhibit GW-3, at 2.
[5]Exhibit GW-1, at 2.
[6]Id. at 3.
[7]Exhibit MAT-6, at 3.

Transco pipeline system to the Facility.[8] Danville will use this new pipeline as part of its integrated gas distribution system. Mirant Danville will contract with Danville for natural gas transportation service to the Facility.

The American Electric Power ("AEP") 230kV East Danville to Roxboro double circuit transmission line is in place and traverses a location near the Facility's site.[9] The transmission line runs northeast of the proposed Facility. AEP conducted a stability performance study of Mirant Danville's connection of the proposed Facility to AEP's transmission system and concluded that the Facility can be accommodated.[10] Interconnection facilities, including a lateral line less than 1,000 feet long[11] will be built by AEP to connect the Facility to AEP's grid.[12]

A second study report dated January 2002[13] addressed the facilities and cost estimates required to integrate the proposed plant into the AEP transmission network, including the facilities necessary to address facility overloads and circuit breaker interrupting duty conditions, if any, which were identified in the earlier studies. The total project cost is estimated to be $3,773,000. Mirant Danville will be responsible for the actual project cost.[14]

Staff witness Tufaro addressed the Facility's impact on the rates and reliability of regulated service and technical viability. He also reported that the DEQ had conducted a coordinated review of the project. Its report, attached to Mr. Tufaro's testimony, provided a summary of potential impacts on natural resources, comments, and recommendations. The summary of those recommendations is as follows:

- Comply with all the conditions of permits and approvals listed in the DEQ Comments.

- Ensure that, prior to construction of the pipelines, complete information concerning the routes, methods of construction, and environmental impacts of the gas pipelines, wastewater pipelines, and gray water and potable water pipelines contemplated to serve this project is provided to the DEQ's South Central Regional Office, the Marine Resources Commission, and the Army Corps of Engineers, Regulatory Branch, Norfolk District.

[8]Exhibits JSH-8, at 2-3; MAT- 6, at 6; Stipulation-9, at 2.
[9]Exhibit GW-1, at 3.
[10]Exhibits MAT-6, at 4; GW-3, at 3 & Attachment GW-R-2.
[11]Exhibit MAT-6, at 4.
[12]Id.
[13]On January 31, 2002, Mirant, by counsel, filed a Motion for Leave to Supplement the Record to include the Facilities Study-Mirant Corporation Connection of Proposed Generating Plant to the AEP Transmission System. This study was performed by AEP. Mirant represents that Staff, Columbia Gas, and the City of Danville do not oppose incorporating the study as an exhibit into the record. With no objection, I find that the Motion should be granted, the study marked as Exhibit GW-10, and received into the record in this case.
[14]Exhibit GW-10, at 2.

- Implement and adhere to strict erosion and sediment control measures during land-disturbing activities in order to minimize adverse impacts to the aquatic ecosystem and the habitat of the speckled killifish and the snail bullhead.

- Provide two copies of documentation of a cultural and historical resources investigation to the Department of Historic Resources for that Department's review and recommendations to avoid indirect as well as direct impacts on historic properties.

- In establishing its Environmental Management System, take into account and follow, to the maximum extent practicable, the pollution prevention suggestions in the DEQ report.

- Protect the City-mandated tree buffer and other trees to be left on the property by following the forest and tree protection recommendations in the DEQ report.

- Use the least toxic herbicides or pesticides that are effective for landscape maintenance, in the event pesticides or herbicides are employed in connection with this project.

- Conduct in-stream activities in Dan River tributaries during low-flow conditions, using the precautions recommended by the Department of Game and Inland Fisheries.

Staff Witness Tufaro concluded that Mirant Danville's "project generally meets the criteria delineated in § 56-265.2 of the Code as it relates to the impact on regulated rates and electrical reliability" and recommended that the Company's application be approved.[15]

John R. Ballsrud offered testimony on the Company's organizational structure and financing capability. He concluded that the project owners have the ability to bring the project to full development and recommended that the Commission grant a certificate with a sunset clause requiring completed development of the project within a two or three year period.[16] Staff also offered the testimony of Mark K. Carsley who addressed the economic benefits to be derived from the construction and operation of the proposed facility. He addressed the public interest. He too concluded that the project appears to be reasonable and in the public interest and therefore, the Staff "does not oppose Mirant's request for a certificate of public convenience and necessity."[17]

At the hearing, Mirant Danville and Staff agreed that it would be appropriate to include a sunset provision, requiring that construction of the Facility begin within two years of the issuance of the CPCN for the Facility. Also, at the hearing, Staff recommended that the Commission should

[15]Exhibit MAT-6, at 7.
[16]Exhibit JRB-5, at 7.
[17]Exhibit MKC-7, at 5.

grant Mirant Danville approval to construct the Facility and leave the record of these proceedings open pending receipt of copies of the Prevention of Significant Deterioration ("PSD") air permit and verification that the Facility's road construction activities qualify for authorization under Nationwide Permit 14, at which time the Commission should issue Mirant Danville a CPCN with the conditions set forth herein.

A Stipulation signed by the parties and Staff was also introduced at the hearing. It addresses Columbia Gas's and Danville's concerns regarding the protection of Columbia Gas's right and Danville's right to provide natural gas service in Pittsylvania County, Virginia, including a portion of an area subsequently annexed by Danville, as of January 1, 1987, which includes the proposed site of the Facility under Certificate of Public Convenience and Necessity No. G-147. The Stipulation recognizes that Danville will own and operate (a) the lateral pipeline for the supply of natural gas to the Facility and for other existing and future customers of Danville and (b) a gas meter station on the Facility site. The Stipulation further recognizes that Mirant Danville will construct, own, and operate plant piping between the meter station on the Facility site and the Facility itself, and requires Mirant Danville to request that the plant piping be considered a part of the Facility to be certificated in this case.

DISCUSSION

This Application was filed prior to January 1, 2002, and accordingly, the standards applicable to approval at the time of the Application were set forth in Virginia Code §§ 56-265.2 B, 56-580 D, 56-46.1 and 56-596 A. Danville Mirant thus sought approval under, and offered evidence to support the findings required, in Code § 56-265.2 B. The Virginia Electric Utility Restructuring Act,[18] however, mandates that "[o]n and after January 1, 2002, the generation of electric energy shall no longer be subject to regulation under this title [Title 56 Public Service Companies] except as specified in this chapter [The Restructuring Act]."[19] The threshold issue in this case is therefore a consideration of what standards should now be applied to this application that was filed and heard before January 1, 2002.

The Commission has held that the provisions of the Restructuring Act operate to supplant the requirements for approval contained in §§ 56-234.3 and 56-265.2 on and after January 1, 2002.[20] The Commission found that:

> [Section] 56-580 D is designed to replace § 56-265.2 with respect to generation. Specifically, much of the text of § 56-580 D that authorizes the Commission to permit the construction of generating facilities is drawn virtually verbatim from § 56-265.2 B. The material difference is that § 56-580 D requires only two of the three findings

[18] Virginia Code § 56-576 et seq.
[19] Virginia Code § 56-577 A 3.
[20] *Commonwealth of Virginia at the relation of the State Corporation Commission Ex Parte: In the matter of amending filing requirements for applications to construct and operate electric generating facilities*, Case No. PUE010313, Order dated August 3, 2001, ("*Filing Requirements*").

> required under § 56-265.2 B, eliminating the requirement that a proposed facility will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth (footnotes omitted).[21]

The Commission has previously applied a new legislative standard in considering certification of an electric generation facility. The application for a new generating facility in Accomack County, Virginia, by Commonwealth Chesapeake Company was filed in September of 1996. The standards for certification were changed by legislation effective March 13, 1998. The change relaxed the standards for facilities that would not be included in the rate base of any regulated utility. A local hearing to receive testimony from public witnesses was held on March 12, 1998, and the evidentiary hearing in Richmond was held on April 10, 1998. The Commission, applying the relaxed standards in the new statute, granted the facility a CPCN.[22] The Applicant would not be prejudiced by application of the new standards as § 56-580 D eliminates one of the three requirements contained in § 56-265.2 B but does not add any new more rigorous requirements. Thus, I believe it could be argued that the requirements of § 56-265.2 B are no longer applicable.

However, the Commission recently remanded a similarly situated application for approval of an electric generating facility proposed by Tenaska Virginia Partners, L.P.[23] In that case, the application had been filed, the hearing conducted, and a hearing examiner's report issued, but a final order had not been issued prior to January 1, 2002.

In the *Tenaska* case the Commission found that "[b]oth sections [§§ 56-265.2 B and 56-580 D] apply…and their provisions overlap to a large extent."[24] The Commission evaluated the application under the criteria established in §§ 56-265.2 B, 56-580 D, 56-46.1 and 56-596 A. The Commission defined the specific criteria identified in those Code sections and found that the analysis should include consideration of reliability, competition, rates, environment, economic development, and the public interest.[25]

Therefore this Application also must be assessed under the criteria defined by the Commission. Virginia Code § 56-265.2 requires the Commission to find that generation facilities:

> (i) will have no material adverse effect upon the rates paid by customers of any regulated public utility in the Commonwealth; (ii) will have no material adverse effect upon reliability of electric service provided by any such regulated public utility; and (iii) are

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[21] Id. at 4.

[22] *Application of Commonwealth Chesapeake Corporation for approval of expenditures for new generation facilities pursuant to Va. Code § 56-234.3 and for a certificate of public convenience and necessity pursuant to Va. Code § 56-265.2*, Case No. PUE 960224, 1998 S.C.C. Ann. Rep. 335.

[23] *Application of Tenaska Virginia Partners, L.P. for approval of a certificate of public convenience and necessity pursuant to Virginia Code § 56-265.2, an exemption from Chapter 10 of Title 56, and interim approval to make financial commitments and undertake preliminary construction work*, Case No. PUE010039, Order (January 16, 2002) ("*Tenaska*").

[24] *Tenaska* Order at 11.

[25] Id. at 13-14.

> not otherwise contrary to the public interest. . .the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

Virginia Code § 56-580 D provides in applicable part:

> The Commission may permit the construction and operation of electrical generating facilities upon a finding that such generating facility and associated facilities including transmission lines and equipment (i) will have no material adverse effect upon reliability of electric service provided by any regulated public utility and (ii) are not otherwise contrary to the public interest….the Commission shall give consideration to the effect of the facility and associated facilities, including transmission lines and equipment, on the environment and establish such conditions as may be desirable or necessary to minimize adverse environmental impact as provided in § 56-46.1.

Section 56-46.1 requires the Commission to consider the impact of a facility on the environment and establish conditions that may be desirable or necessary to minimize any adverse environmental impacts. It also requires the Commission to consider any improvements in service reliability that may result from the facility and allows the Commission to consider the effect of the facility on economic development within the Commonwealth. Section 56-596 A requires consideration of, among other things, the goals of the advancement of competition and economic development in Virginia.

This analysis thus should also include consideration of reliability, competition, rates, environment, economic development, and the public interest. The Facility proposed in this case satisfies those criteria. The Facility will be interconnected to the AEP transmission system. AEP performed studies to define the details of interconnection, equipment configuration, costs, and schedule for completing the work. It concluded that the proposed facility could be accommodated. The facility will therefore have no material adverse effect upon the reliability of electric service provided by AEP. Although not fatal to the Application, no evidence was offered pursuant to § 56-46.1 that the interconnection will also enhance service reliability.

Mirant Danville is not affiliated with any incumbent electric regulated public utility in Virginia and the investment in the Facility will not be in the rate base of any electric utility in Virginia. Mr. Tufaro also testified that any additional costs of interconnecting the facility to AEP will be borne by Mirant Danville and therefore, the addition of the facility "will have negligible, if any, impact" on AEP's retail rates.[26] The Facility thus will have no material adverse effect upon the rates paid by customers of any regulated electric public utility in Virginia.

[26]Exhibit MAT-6, at 4.

Little evidence was offered on the effect the Facility will have on the rates and capacity of natural gas utilities. Columbia Gas, however, participated in this case and did not oppose the Application. Moreover, Danville operates a municipal gas utility and supported the Application. It intends to construct and operate a new 14-mile lateral that will interconnect with a Transco interstate pipeline. Since the new pipeline will also be used as part of the integrated Danville distribution system, the addition of the new Facility and its associated facility should enhance the capacity and service of the Danville system. Therefore, it would appear that the Facility would not have an adverse effect on the rates of Columbia Gas or the Danville municipal utility, and may enhance the reliability of the Danville system. Moreover, the new gas facilities may provide the area with access to more diverse supply options.

The capacity of this proposed electric generating facility will not be owned by the incumbent utility, hence it should help to distribute market power and better serve the development of wholesale competition in Virginia.

As described in the direct and rebuttal testimonies of Mr. Don Hooks, the Facility, as well as the associated interconnection facilities and other equipment, has been located and designed, and will be constructed and operated to minimize any adverse environmental impact.[27] The Facility will be located in an industrial park and is properly zoned for heavy industry facilities.[28] Best available control technology ("BACT") will be utilized to minimize air emissions and, even assuming a worse-than-worst case operating scenario, the Facility's impact on air quality will be considered "insignificant."[29] Emissions controls for the Facility include dry low-No_x combustors in each CT. A selective catalytic reduction ("SCR") system will also be installed to further reduce nitrogen oxide ("NO_x") emissions from each combined CT/HRSG exhaust stack to less than 3.5 parts per million at 15% oxygen. Emissions of sulfur dioxide and particulate matter will be minimized through the use of clean fuels.[30] The modeling for maximum potential emissions rates assumes continuous operation at maximum load ("worse-than-worst case") 24 hours per day, 365 days a year, which is conservative because maximum load only occurs under limited operating conditions.[31] Mirant Danville estimates that the Facility will run approximately 60%, not 100% of the time.[32]

The Facility will be located in an area that is in attainment or unclassified with respect to the National Ambient Air Quality Standards for particulate matter ("PM_{10}"), sulfur dioxide ("SO_2"), carbon monoxide ("CO"), ozone, NO_x, and lead.[33] All neighboring counties are also in attainment or unclassified. The project is subject to a federal program for new major sources of certain pollutants mandated by the 1970 Clean Air Act to prevent significant deterioration. The program is administered by the DEQ. This project is one of the named source categories, and therefore

[27]Exhibits DH-2 & DH-4.
[28]Exhibit DH-2, at 1.
[29]Exhibit DH-2, at 2-4 & Attachment DH-2; DH-4, at 2.
[30]Exhibit DH-2, at 2.
[31]Id. at 3.
[32]Id. at 4.
[33]Exhibit DH-2, Attachment DH-2 at 6-1.

program applicability is triggered if any of the pollutants exceed 100 tons per year. The estimated potential emissions[34] for the project are as follows:

Pollutant	Estimated Project Potential Emissions[35] (tpy)
Nitrogen Oxides (NO_x)	405.4
Sulfur Dioxide (SO_2)	50.1
Particulate Matter <10 μm (PM_{10})	226.3
Carbon Monoxide	806.8
Volatile Organic Compounds (VOC)	58.5

A PSD air permit therefore will be required.

The Facility also will utilize "gray water" (sewage treatment plant effluent) from Danville's wastewater treatment plant for cooling and operation purposes in order to avoid the need for a direct water withdrawal and discharge into the Dan River.[36]

Mr. Hooks also addressed each of the concerns set forth in the DEQ's Comments and expressed the Company's willingness to comply with the DEQ's recommendations applicable to the Facility.[37] One of the specific issues raised in the DEQ Comments was that Mirant Danville may need to obtain various water quality permits. In response to the DEQ's concerns, the Company acknowledged that it will construct a road on the Facility site to allow equipment installation during construction which will impact less than 300 feet of intermittent stream. Mr. Hooks pointed out that this activity likely qualifies for authorization under Nationwide Permit 14 issued by the Army Corps of Engineers under Section 404 of the Clean Water Act. The DEQ has conditionally certified use of this nationwide permit pursuant to Section 401 of the Clean Water Act and therefore an individual Virginia Water Protection Permit ("VWPP") for the activity would not be required.[38] Mirant Danville will file a joint federal-state permit application with the Virginia Marine Resources Commission ("VMRC") requesting verification of eligibility for the nationwide permit, a VWPP waiver and, if necessary, a permit from the VMRC for encroachment in, on or over state-owned subaqueous beds.[39]

In his testimony, Staff witness Tufaro concluded that "many of the issues raised in the DEQ report will be addressed by the requirement that Mirant comply [with] all federal, state, or local environmental law or regulation in constructing and operating the proposed facility."[40]

[34]Exhibit DH-2, Attachment DH-2 at 4-3.
[35]Annual emissions have been calculated based upon the operating hour restrictions described in Section 3 at maximum operating load and 59ºF. Emissions include all ancillary equipment and startup/shutdown emissions.
[36]Exhibits DH-2, at 7; DH-4, at 4-5, 11.
[37]Exhibit DH-4.
[38]Exhibit DH-4, Attachment DH-R-1.
[39]Exhibit DH-4, at 3-4.
[40]Exhibit MAT-6, at 7.

There are no other projects proposed in the immediate surrounding area although two projects are pending before the Commission that are proposed west of Danville in the City of Martinsville[41] and in Henry County.[42] Moreover, no witness raised any concern with the cumulative impacts of this Facility on the surrounding community. To the contrary, the community supports this project.

The economic benefits and public interest to be gained from this project are well demonstrated on this record. The Facility will promote the public interest by providing economic benefits to Danville and the surrounding area. In his testimony, Mr. James S. Harr, deputy general manager of Danville's Utility Department, pointed out that the Commonwealth has classified Danville as one of a group of localities suffering from a high level of fiscal stress.[43] Mr. Harr and Mr. Waldman, project director for Mirant Americas Development, Inc., described, in their respective testimonies, the economic benefits that would be derived from the Facility. According to both Mr. Harr and Mr. Waldman, the economic benefits will come primarily from the increased tax base that this approximately $500 million Facility will add to the Commonwealth and Danville. Additionally, the Company anticipates that over the 28-month construction period, an average of 225 workers will be employed at an average labor rate of $30 per hour.[44] The Facility will employ 20-25 permanent employees with an annual pretax payroll of approximately $1.8 million.[45] The City of Danville granted its approval of the construction and operation of the Facility through the issuance of Special Exception Permit No. SEP 01-004 on May 1, 2001.

Staff witness Mark K. Carsley concluded that "[b]ased on Mirant Danville's assessment of tax revenues to be generated by the proposed facility, along with the Company's general description of the economic benefits arising from its construction and operation, the project appears to have positive net economic benefits for Danville."[46]

Mirant Danville also seeks an exemption from the provisions of Chapter 10 of Title 56 of the Code of Virginia. It will be a qualified exempt wholesale generator under the Public Utility Holding Company Act of 1935. It will sell power from the proposed facility on a merchant basis exclusively at wholesale. Accordingly, it will be subject to regulation by the Federal Energy Regulatory Commission, and this Facility will not be included in the rate base of any pubic utility whose rates are regulated by this Commission. Although it may be argued that the Restructuring Act supercedes application of the provision of Chapter 10 to Mirant Danville, it is reasonable to exempt Mirant Danville under § 56-265.2 B, if such exemption is still considered necessary.

[41] *Application of CinCap*, Case No PUE010169, DCC 010330128, filed March 27, 2001.
[42] *Application of Henry County Power*, Case No. PUE010300, DCC 010520185, filed May 10, 2001.
[43] Exhibit JSH-8, at 2.
[44] Exhibit MKC-7, at 2.
[45] Exhibits JSH-8, at 2; GW-1, at 4.
[46] Exhibit MKC-7, at 4.

The Applicant also seeks interim approval to make financial expenditures and undertake preliminary construction wok. The Commission has explicitly held that § 56-234.3 is supplanted by the Restructuring Act with respect to generation.

> Section 56-234.3, like § 56-265.2 is neither included by reference nor otherwise specified in Chapter 23 so as to indicate its continuing applicability with respect to generation. Further § 56-234.3 is part of the rate base, rate of return pricing provisions of Chapter 10 that are explicitly replaced by the pricing provisions of Chapter 23 with respect to retail generation.[47]

Therefore, as discussed earlier, it is also debatable whether Mirant Danville even needs interim approval to make financial expenditures and undertake preliminary construction work after January 1, 2002, however, to the extent necessary, such approval should be granted. Such expenditures would be made at the developer's own risk and would not be borne by ratepayers of any regulated utility.

Finally, a recent news article announced cancellation of this project, but no motion to withdraw the pending application has been filed.[48] Therefore, Mirant Danville should be directed to file written notice of its intent concerning this Facility as soon as possible.

FINDINGS AND RECOMMENDATIONS

Based on the evidence received in the case, I find that:

1. The Facility will have no material adverse effect upon the rates paid by customers of any regulated utility in the Commonwealth;

2. The Facility will have no material adverse effect upon the reliability of electric service provided by any such regulated public utility;

3. The Facility should enhance development of electric competition in Virginia;

4. Mirant Danville shall comply with the conditions set forth in the DEQ's Comments, page 3 of Appendix A of Mr. Tufaro's prefiled testimony as applicable in the construction and operation of the Facility;

5. The Facility will have only a minimal impact on the environment;

6. The Facility will have a significant and positive impact on economic development in the City of Danville;

[47] *Filing Requirements* Order at 5.
[48] Danville Register & Bee, February 1,2002, attached.

7. The plant piping between the meter station and the Facility itself is considered a part of the Facility whose certification has been requested;

8. The Commission should grant Mirant Danville approval to construct the Facility and leave the record of these proceedings open pending receipt of copies of the PSD air permit, verification that the Facility's road construction activities qualify for authorization under Nationwide Permit 14, and confirmation of its intent to move forward with this project, at which time the Commission should issue Mirant Danville a certificate with the conditions set forth herein;

9. The Commission should grant Mirant Danville interim authority pursuant to Va. Code § 56-234.3, to make financial expenditures and undertake preliminary construction work;

10. The certificate issued to Mirant Danville should contain a condition that it will expire two years from the date it is issued if construction on the Facility has not commenced; and

11. The Commission should grant Mirant Danville an exemption, pursuant to Va. Code § 56-265.2 B, from Chapter 10 of Title 56 of the Code of Virginia when it issues Mirant Danville a CPCN.

I therefore ***RECOMMEND*** the Commission enter an order that:

1. ***ADOPTS*** the findings contained in this Report;

2. ***DIRECTS*** Mirant Danville to identify its current plans for this Facility;

3. ***GRANTS*** Mirant Danville interim approval, pursuant to Va. Code § 56-234.3, if applicable, to make financial expenditures and undertake preliminary construction work on the Facility;

4. ***GRANTS*** Mirant Danville approval to construct the Facility pursuant to Va. Code §§ 56-265.2 B and 56-580 D and leave the record of these proceedings open pending receipt of copies of the PSD air permit, verification that the Facility's construction activities qualify for authorization under Nationwide Permit 14, and confirmation of its intent to move forward with this project, at which time the Commission should close the record and issue Mirant Danville a certificate with the conditions set forth herein; and

5. ***GRANTS*** Mirant Danville an exemption from Chapter 10 of Title 56 of the Code of Virginia pursuant to Va. Code § 56-265.2 B.

COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and 5 VAC 5-20-120 C) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within fourteen (14) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118,

Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

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Deborah V. Ellenberg
Chief Hearing Examiner